

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PART I ORDER REGARDING
INTERIM INTERCONNECTION
AGREEMENT

January 29, 1999

MID-MAINE TELPLUS
Petition for Arbitration of
Interconnection Agreement with Bell
Atlantic-Maine

Docket No. 98-593

MID-MAINE TELPLUS
Request for Commission Investigation
of Unreasonable Acts and
Discriminatory Practices of Bell
Atlantic-Maine Regarding
Interconnection Rates, Terms and
Conditions

Docket No. 98-806

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

I. SUMMARY

We order Bell Atlantic-Maine (Bell Atlantic) to enter into an Interim Interconnection Agreement with Mid-Maine TelPlus (MMTP).¹

II. BACKGROUND

On December 18, 1998, MMTP filed a Motion to Adopt Interconnection Agreement on Interim Basis, requesting that the Commission: (1) issue an order under Section 252(i) of the Federal Telecommunications Act of 1996 ("Act")² that Bell Atlantic make available and enter into as of January 1, 1999, an existing Commission-approved interconnection agreement between Bell Atlantic and New England Fiber Communications, L.L.C.

¹The parties have consistently referred to MMTP TelPlus as "Mid-Maine." We use the abbreviation MMTP in order to avoid any possible confusion and make clear the distinction between the CLEC (MMTP) and Mid-Maine Telecom, Inc. an incumbent local exchange carrier and independent telephone company that presently provides service to an area northwest of Bangor. MMTP is an affiliated interest of Mid-Maine Telecom.

²47 U.S.C. § 252(i).

("NEFC"), d/b/a Brooks Fiber, subject to certain modifications described in the Motion, on an interim basis, pending final execution of an Interconnection Agreement with Bell Atlantic upon resolution of the issues in this proceeding; and, to the extent necessary; (2) issue an order requiring Bell Atlantic to enter into and abide by the terms of such an agreement on said interim basis, pursuant to the Commission's authority to act on an expedited basis to issue a temporary order pending conclusion of an investigation under 35-A M.R.S.A. § 1304(5).

Pursuant to a schedule established by the Presiding Officer, Bell Atlantic filed its Opposition to the Motion on January 6, 1999. MMTP filed its Reply to Bell Atlantic on January 8, 1999. This matter was the subject of deliberations and a vote by the Commission on January 19, 1999.³ On January 22, 1999, MMTP submitted a draft Part I Order to implement the Commission's decision, pursuant to a request of the Presiding Officer under Chapter 110, § 762 of the Commission's Rules of Practice and Procedure. We issue that Order here with certain non-substantive changes.

III. DECISION

After consideration of the arguments of the parties, the relevant portions of the record in these proceedings and the procedural history of these proceedings, we find that MMTP's Motion should be granted. We order Bell Atlantic to enter into the Interim Interconnection Agreement, as described herein, with MMTP. Said Agreement shall govern the relationship and transactions between the parties which are within the scope of the Agreement until the Commission approves a final Interconnection Agreement in this proceeding. We find that the factual circumstances presented in these cases support this decision. The factual conclusions and the legal basis for this decision will be included in our Part 2 Order.

³ The Commission may issue an order in two parts pursuant to the Commission's Rules of Practice and Procedure, which provides:

4

In extraordinary circumstances the Commission may issue its decision in two or more parts. The first part shall plainly state the result of the decision, specify the orders made by the Commission and summarize the factual conclusions reached and shall constitute the Commission's decision for purposes of paragraph (a) [of Section 1003].

Accordingly, we

O R D E R

1. That the Motion of MMTP to Adopt Interconnection Agreement on Interim Basis is hereby granted as described herein.

2. That Bell Atlantic shall enter into said Interim Interconnection Agreement with MMTP to be effective upon the effective date of this Order; and that said Interim Interconnection Agreement shall govern the relationships and transactions between the parties which are within the scope of the Agreement until the date set forth in Ordering Paragraph 3.

3. That said Interim Interconnection Agreement shall remain in effect until the earlier of any termination or amendment thereof by the mutual agreement of the parties, subject to the approval of the Commission, or until the Commission's decision in the arbitration proceedings shall have final effect in the form of an effective and enforceable arbitrated Interconnection Agreement, subject to the provision in Ordering Paragraph 5.

4. That, unless otherwise ordered by the Commission, the Interim Interconnection Agreement shall be null and void upon the effective date of a final and enforceable arbitrated Interconnection Agreement, subject to the provision in Ordering Paragraph 5.

5. That the Interim Interconnection Agreement shall remain or resume being in effect if the arbitrated Interconnection Agreement is stayed or rendered ineffective pending any judicial review or appeal of the Commission's final decision in this case.

6. That the Interim Interconnection Agreement shall contain the same terms and conditions as the interconnection agreement between Bell Atlantic and New England Fiber Communications, L.L.C. ("NEFC"), d/b/a Brooks Fiber, approved by this Commission on August 26, 1997, in Docket No. 97-502, except as modified as follows:

(a) The term of the Interim Interconnection Agreement shall be as provided in Ordering Paragraphs 2-5;

(b) Reciprocal compensation shall not be required to be paid on Internet Traffic under the Interim Interconnection Agreement;

(c) MMTP will not seek to treat as local calls, calls to any NXXs assigned to MMTP for which MMTP has no local facilities, defined as loops or local switching (provided either by itself or by use of Bell Atlantic UNEs), and which would terminate in another location;

(d) During the term of the Interim Interconnection Agreement, MMTP shall notify Bell Atlantic and obtain an affirmative approval from the Commission for the addition of any new NXXs prior to requesting said NXXs from the Code Administrator;

(e) That MMTP will not request fiber interconnection under the Interim Interconnection Agreement and, if the final Agreement permits MMTP to use copper facilities in various Bell Atlantic locations, replace that fiber with copper; and in the event that MMTP requests fiber interconnection under the Interim Interconnection Agreement and replaces that fiber with copper under the final Agreement, MMTP shall pay Bell Atlantic for any uncompensated additional cost to Bell Atlantic associated with the copper replacement;

(f) That, with respect to any other duplicative reasonable uncompensated costs which are incurred by Bell Atlantic as a result of having to incur an expense under the Interim Interconnection Agreement and then incur a second expense under the final arbitrated Interconnection Agreement to explicitly replace a similar action undertaken pursuant to the Interim Interconnection Agreement, Bell Atlantic may request that the Commission order MMTP to reimburse Bell Atlantic for a portion or the entirety of any such duplicative costs which Bell Atlantic can demonstrate would not have been incurred but for mutually incompatible requests made by MMTP under the Interim Interconnection Agreement and later under the final arbitrated Interconnection Agreement; and

(g) The provisions of (e) and (f), above, shall survive the termination of the Interim Interconnection Agreement.

Dated at Augusta, Maine this 29th day of January, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.